

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

6:69cv07941-BB

RIO CHAMA STREAM SYSTEM
Section 3, Rio Cebolla

Subfile No. CHCB-005-0004

**POSITION OF STATE OF NEW MEXICO WITH RESPECT TO
WATER RIGHTS CLAIMS UNDER SUBFILE CHCB-005-0004**

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer (“State”) and in compliance with the Order entered September 24, 2008 (Docket No. 9293) in connection with subfile CHCB-005-0004 and the hearing scheduled for October 29, 2008, states the following:

1. The State recognizes the existence of valid irrigation water rights on 6.2 acres of land under the Emiliano Maes South Ditch, and 2.5 acres of land under the Atencio North Ditch, as shown on the amended subfile map dated July 1, 2008 in subfile CHCB-005-0004.

2. It is the State’s position that there are no valid irrigation water rights appurtenant to Defendant Mario R. Martinez’ property in subfile CHCB-005-0004 under the Trujillo-Lopez Ditch. The records of the Department of the Interior (Final Proof dated 1923) indicate that Juan Martinez y Lopez first established residency on this land in 1918. In addition, materials submitted to the Office of the State Engineer on November 18, 1948, in connection with Declaration OSE No. 001133 to 001167 and Application OSE No. 2658 specifically indicate that the lands under the Trujillo-Lopez

Ditch owned by Juan Martinez y Lopez were irrigated subsequent to 1907. No application for a permit to irrigate these lands was ever made. Even if these lands were irrigated prior to 1907, any use of water on these lands was discontinued many years ago and those water rights were abandoned. The lands appear irrigated only on photographs taken in 1935. Field inspections in 1960 and 1995 found the lands not to be irrigated and the ditch inoperable and abandoned.

3. Documentary evidence to be introduced at the hearing scheduled for October 29, 2008, is as follows:

- (1) Hydrographic Survey Report, Rio Chama Stream System, Section 3, Rio Cebolla, August 11, 2000, pages 126-27 and Appendix pages C-9 to C-13.
- (2) Amended Subfile Map, Subfile CHCB-005-0004 dated August 11, July 1, 2008.
- (3) Declaration of Ownership of Water Right filed January 28, 1949 (OSE No. 01133 to 01167) and associated maps received by the Office of the State Engineer on November 18, 1948 (Sheets 1 through 4).
- (5) Department of the Interior, Homestead Entry, Final Proof, Juan Martinez y Lopez, dated 1923.

Respectfully submitted,

/s/ Ed Newville

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2008 I filed the foregoing electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM-ECF participants in the manner indicated:

via first class mail, postage prepaid addressed as follows:

Mario R. Martinez
Sophia D. Martinez
P.O. Box 217
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